

1790

1791

JUS ACADEMICUM:
O R, A
D E F E N C E
O F T H E
Peculiar Jurisdiction

W H I C H

Belongs of Common Right to UNIVERSITIES
in general, and hath been granted by ROYAL
CHARTERS, confirm'd in PARLIAMENT, to those
of ENGLAND in particular.

S H E W I N G

That no Prohibition can lie against their Courts of Judica-
ture, nor Appeal from them, in any Cause like that which is now
depending before the VICE-CHANCELLOR of CAMBRIDGE. With
a Full Account and Vindication of the Proceedings in that CAUSE.

By a Person Concern'd.

*How come our UNIVERSITIES and COLLEGES to be in a worse Condi-
tion than any Abroad; when there are not greater Privileges given to
any, nor enjoy'd for a longer Time, than have been by Ours? Shall the
Noble Endowments of Our COLLEGES, which are the Honour of Our
Nation, the Nurseries of Our CHURCH, the Envy of Foreigners, and
the Eye-sore of none but such as hate Learning and ingenuous Educa-
tion, make them become an easier Prey to such Unquiet Spirits as by
Law Suits and Unstatutable Appeals, would Overthrow that Power
which preserves them in a State of Tranquillity, without which they
can never Attain the End of their Institution? Br. Stillingfleet.*

Jura negat sibi nata, nihil non arrogat. Hor.

L O N D O N:

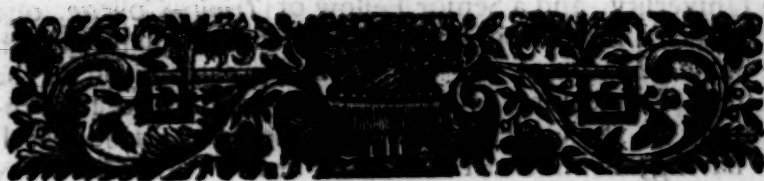
Printed for R. WILKIN, at the King's-Head, in St. Paul's
Church-yard. MDCCXXII.

15



ERRATA.

PAGE 4. l. 28. for all then, r. all of them. p. 9. l. 24. for praxium. r. praxitum. p. 12. l. 4. r. this Sentence with, l. 5. *Nihil faxerunt* contra, instead of. non prohibuerunt eos. l. 4. from the Bottom, r. Doctors. p. 13. for Maesterlius r. Maestertius. l. 11. for *Westryfia*, &c. r. *Westryfiave*. p. 15. l. 16. for by. r. the. l. 17. for 'tis, r. it being. p. 16. l. 2. for was. r. is. p. 26. l. 33. for *distinliuam*, r. definitiuam. p. 33. l. 12. for Lib. XIII. F. r. l. 13. ff. p. 36. l. 14, 15. for Cap. 18. F. r. l. 18. ff. l. 3. from the Bottom, for if, r. For, p. 39. l. 8. for, F. r. ff. p. 41. l. 18. for *Calus*, r. *Causas*. l. 33. for *analogica*, r. *analogia*.



JUS ACADEMICUM:
OR, A
D E F E N C E
O F T H E
Peculiar Jurisdiction, &c.



WHEN the Master of *Trinity-College* in *Cambridge* publish'd the last Edition of his *Proposals*, he, or some one for him, joyn'd to that Piece a most *Virulent* Libel subscrib'd *J. E.* a pretended *Member* of the same *College*, and entitled, *A full Answer to all the Remarks of a late Pamphleteer.* The *Remarks* which this *J. E.* undertakes to answer, had some time before been made and publish'd upon the foresaid *Proposals* by the Learned *Dr. Middleton*, which cou'd be no Secret to the Master of *Trin.* He on the very Day when those *Remarks* were first publish'd here in *Cambridge*, was assur'd by *Mr. P. Chaplain* then to the Lord *Chancellor*, now to the *King*, a Person of undoubted Credit, and who very well knew the Truth of what he said, That *they were not written by Dr. C.* And several Persons who are suppos'd to have been employ'd by the Master to enquire into this Matter, had the like Assurances given them, That *Dr. Middleton*, and he only, was the Author. However, the pretended *J. E.* took this Oc-

cession to fall exceeding foul upon one of the Professors in the University, and a Senior Fellow of *Trinity-College*, one unconcern'd in the Dispute, and indeed unacquainted with the Subject Matter of it; but he had greatly incurr'd the Master's Displeasure by frequent Opposition to his Proceedings in the College, and much more, as 'tis suppos'd, for having, in Concurrence with many other worthy Members of the same College, petition'd the King for the Appointment of an Ordinary Visitor, and had not long before been twice in *London* earnestly soliciting the Dispatch of that Petition. This Man, who had always lead an irreproachable Life, and hitherto enjoy'd an unblemish'd Reputation, being remarkable, if for any Thing, on Account of such Moral Qualities as are directly opposite to those which the Author of this Libel hath assign'd him, not a little surpriz'd and startled to see himself aspers'd upon a groundless Pretence, with the foulest Calumnies that Malice could invent, immediately apply'd himself for Justice where the Statutes of his College direct him to seek it at the first Instance. This he did four several Times, but to little Purpose: Upon the third Repulse, he made his Complaint to the *Vice-Chancellor*, who by the Statutes of the University, which are of a later Date than those of his College, is empower'd and oblig'd to Hear and Determine all Causes of Complaint, that shall arise between any Members of the University whatsoever.

THE *Vice-Chancellor* hereupon assembled all the Heads of Colleges that were then in the University; who all then unanimously, "Declar'd and Pronounc'd the said Book "to be a most virulent and scandalous Libel, highly injurious "to the Complainant, contrary to good Manners, and "a notorious Violation of the Statutes and Discipline of "this University;" Resolving withal, "That as soon "as the Author of the said Libel could be discover'd, "they would do Justice to the said Complainant, by inflicting "such Censure upon the Offender as the Statutes of this "University in this Case do appoint."

THE Act of Indemnity intervening before any Legal Discovery was made of the Author, all that could be further done in this Case, was to repair the injur'd Person's Reputation; the doing of which, he had, as he conceiv'd, still a Right to demand; Wherefore on the 24th of November

Her last he appear'd in the *Vice-Chancellor's Court*, where he exhibited a Copy of the foregoing *Censure*, and desir'd that it might be read, which being done by the *Vicechancellor's Order*; the Complainant thereupon, addressing himself to the *Vice-Chancellor*, implor'd the *Judicis Officium*, and desir'd, *That Right and Justice might be done him, Petiit Jus & Justitiam sibi fieri*, according to the Resolution taken by the *Vice-Chancellor* and the *Heads* when they pass'd this *Censure*.

UPON this Motion the *Vice-Chancellor* appointed a *Promotor Officij* to prosecute the Cause; and decreed, That such Persons should be summon'd to appear, as were thought capable of giving Information concerning the Writing, Printing, and Publishing the said *Libel*.

SEVERAL Persons were then upon the Place, as they still are, suppos'd to be well able to give such Information, and among them there were those who had in publick Company declar'd beforehand, That such a *Libel* was writing, and against whom it was to be written, told some of the Contents of it, and nam'd the very Person who was Commission'd to publish the Title in *London*, and who, as 'tis credibly reported, actually did overlook the Press; which Person likewise then was, and is now, as I suppose, resident in the University. These in all Likelihood, were able to give some Account of the Author.

HOWEVER it was thought adviseable to summon the Master of *Trinity-College* in the first Place, which might prevent giving the like Trouble to others. He doubtless could tell who this pretended *J. E.* was, since it could not be suppos'd that the *Libel* was joyn'd to the *Proposals* without his Consent. And the Master must be well acquainted with *J. E.* since it appear'd from several Passages in the *Libel*, that *J. E.* knew more of the Master than all the World did besides. In short; they were generally suspected to be one and the same Person. If that Suspicion was ill-grounded, the Master had now a fair Opportunity to clear himself, without being brought to a formal Tryal, by producing this *J. E.* If he were Guilty, he had a like Opportunity to put an End to this troublesome Affair, by an Ingenious Acknowledgment of the Wrong he had done, which would have been then made by him with a much better.

better Grace, than when he shall be forc'd to it upon a Publick Conviction.

He receiv'd the Summons like one dispos'd to obey them, but went for *London* in two or three Days; it had indeed been given out before, that he design'd such a Journey, which was the Reason why the Summons were serv'd upon him at that Time, viz. on the 21st of *December*, but it was likewise said, that he would return in a Week or Nine Days, which yet he did not, till long afterwards. On the Day appointed for his Appearance, viz. *Jan. 17*. When the Court was sate and expected him, a Letter was produc'd from the most Honourable the *Lord Chamberlain*, directed, as 'tis said, to the Master himself, and requiring his Attendance on His Majesty's Service, to which the *Vicechancellor* paid so great a Regard, that he adjourn'd all further Proceeding in this Cause to the 16th of *February*. But on the 9th of that Month a *Rule of Court* from the *King's-Bench* was serv'd upon the Deputy *Vicechancellor* and other Persons concern'd, inhibiting all further Proceedings, till Cause was shewn why a *Prohibition* ought not to be granted, and for this the 2d Day of the approaching Term was assign'd.

WHAT the Suggestions were, upon which this *Rule* was procur'd, I know not; nor can I pretend to tell what will be offer'd in answer to them; or whether or no it will be adviseable to give any Answer at all. The Reader will soon perceive what would be the Opinion of Foreign Lawyers upon this latter Question. But having the Honour to be a Member of this University, and as such bound upon all Occasions to defend, so far as I lawfully may, its Rights, Privileges and Immunities, *rogatus & non rogatus*, I shall take the Liberty, as I hope I may without Offence to any, to plead for its *Independent Jurisdiction*, the most valuable as well as the most incontestable of all our Rights, against any thing that has been said or done in Diminution of them by private Persons: Having likewise some Knowledge of the Case, and no small Concern in it, I shall examine what some of our own Members have objected against the *Proceedings* upon it: I do not however blame those Gentlemen, for giving their Opinions before they are ask'd,
it

it being much the same with what I am about to do myself. Nor indeed can I in Justice impute this Readiness of theirs to any other Cause so much as their Zeal for the Honour of our common Mother, which in their Apprehension was like to receive some Blemish, should the Course that was begun be pursu'd. It must be owned that they are under no Suspicion of favouring the suppos'd Criminal, who has not the Good Fortune to have many Partisans wheresoever he is known; much less of Patronizing the Crime he is like to be charg'd with, which, I question not, but as Men of Probity and Honour, they utterly abominate. I do not say this in Complement to them, since not one Man, that I can hear of, has yet been found so destitute of common Honesty, and void of Shame, as to open his Mouth in Excuse of that Crime.

THE Universities of *England*, like those of all other Countries in the Christian World, have from the Time of their Foundation to this Day, had a peculiar Jurisdiction establish'd within themselves, in order to Determine several Sorts of Causes, whereof that of *Injuries* hath ever been one, in which any of their own Members, or those retain'd in their Service, or such as otherwise partake of their Privilege, are Parties, whether as Plaintiffs or Defendants. This Jurisdiction hath always been independant upon the Ordinary Courts of Justice, and Subject to no Controul, but theirs only, who are invested with the Sovereign Authority.

ALL this, as to our *English* Universities, may upon Occasion be made appear from many Royal Charters, which have been confirm'd by Act of Parliament.

THE Charters granted by several Princes of this Realm to the University of *Cambridge*, by Queen *Elizabeth* in particular, empower the Chancellor or his Deputy, to hold a Court of Record at what Time, and in what Place soever he shall think fit, within the Town or Suburbs of *Cambridge*; and therein to take Cognizance of all Personal Actions, as well of Debt, Accounts, or any Contract whatsoever, and of *Injuries* as of Trespas, Misdemeanor, Breach of the Peace, Mahime and Felony only excepted.

THE Judge of this Court hath Power to compel the Parties to appear before him, and submit to the Sentence he shall pronounce, upon Pain of Fines, Imprisonment, or Expulsion. The Mayor of the Town and Sheriff of the County are bound to receive into their respective Prisons Delinquents committed by him, and not to release them, but by his Order. No Appeal lies from his Sentence, but to the *Senate* of the *University*. None from that, unless it be to the King in Parliament. The Chief Justices and other Judges of the *King's Bench*, and *Common-Pleas*, are commanded to allow of these Proceedings without Difficulty or Impeachment. All Judges and other Magistrates whatsoever are forbid to intermeddle in them, or to call the Parties before them. All and singular *Writs* issu'd out to that Purpose, are declar'd to be *ipso jure* Null. It is provided likewise, That no Forfeiture of these Rights, Privileges and Immunities shall be incurr'd by any Disuse or Abuse of them.

WHAT hath been now said, is taken from the *Charter* granted by Queen *Elizabeth* in the 3d Year of her Reign, which together with the preceding *Charters*, or *Letters Patents*, were confirm'd by the Parliament in the 13th of the same Reign. When it was Enacted, That they should be thenceforth " Good, Effectual, and Available in Law, to " all Intents, Constructions and Purposes— after and according to the Form, Words, Sentences and true Meaning of every of the same, as amply, fully, and largely, " as if the same *Letters Patents* were recited *Verbatim* in that " Act of Parliament, any Thing to the contrary in any " wise notwithstanding. "

FROM hence it is easy to perceive what little Hopes a Member of this University can have of obtaining a *Prohibition* from the Courts above in any Cause like that now depending before the Vicechancellor.

THIS is not all, for such a Member has not only Reason to despair of succeeding in an Attempt of that Kind, but is utterly disabled from making the Attempt, and, which is more, every one that ever hath been a Member of this University, is under the same Disability. He can neither move for a *Prohibition* nor give his *Advice* or *Consent* to such a Motion, the Thing mov'd for, being directly contrary to the chief of those Privileges, which they that have taken

taken the *Matriculation Oath*, stand bound to defend *Suffragio atque consilio*, so long as they shall live. Such as have taken Degrees among us, would do well to remember, that at their Admission to every Degree, they bound themselves by Oath to renounce any Privileges of their own, so far as they are inconsistent with the Privileges and Statutes of the University.

IN other Countries a simple Oath of Obedience to the Academical Rector, like that Part of ours which every Scholar takes at his first Entrance into the University, That he will obey the Chancellor and Vice-Chancellor quatenus jus fasque erit, such an Oath, I say, is thought Abroad to be a sufficient Restraint upon those who have taken it, from applying themselves to any other Judicatures than that of the Body to which they belong; and who can doubt but that it indispensably obliges them to Obedience, when summon'd to appear before their Superiors? Foreign Lawyers go further, and affirm that in Case any Member of a University shall but submit himself to another Judicature, the Rector by virtue of this Oath may, and ought to inhibit the Proceeding, and call the Cause before himself. *Habet hæc Sententia minimum dubij* (says Liebenthal from Mastb. Stephanus) *propter Juramentum Rectori præstum, ob quod si studiosus sæculari Magistratui se submittat, Rector illi inhibere, & causam ab illo magistratu advocare & potest & debet.* Rebuffus had before maintain'd the same Opinion, in regard to Causes that are proper for the Rector's Cognizance, and that upon the same Ground, *viz. Ratione Juramenti quod illi præstiterunt, & se adstrinxerunt.* In the University of Paris there are distinct Jurisdictions belonging to every Nation and every Faculty apart, like those of our Colleges: One that finds himself to be aggriev'd, may, according to the last named Author, appeal from a Sentence pass'd in any of those particular Bodies, but then it must be to the University, and from thence there lies no Appeal to any Tribunal whatsoever, it being there thought a monstrous Act, whereby the Guilt of Perjury is incurr'd, to appeal from the University, tho' it were to the Parliament. *A Facultatis seu Nationis Sententia licet gravato ad Universitatem appellare, sed ab Universitate non licet appellare; & pro monstro olim habebat Universitas quod appellaretur etiam ad Senatum, cum perjuri sint appellantes.*

HERE such as are apt to cast an envious Eye upon those Privileges and Immunities, which have been granted to our *English Universities* by Sovereign Authority, may be pleas'd to observe, That those Privileges, great as they are, cannot be reckon'd among the many particular Advantages by which these are distinguish'd from all other *Universities* in the World, being in Truth no more than is necessary to capacitate them for such Services, as they have on all Occasions, and in all difficult Times, render'd to this Church and Nation; for which Services they in return have receiv'd from our Princes, from our Nobles, and our Gentry, and above all from those many Venerable Prelates, who in former Ages adorn'd this National Church, such signal Marks of Benevolence and Favour, that no other Universities can boast of the like: Few of 'em perhaps can produce such a Catalogue of Illustrious Benefactors as are yearly commemorated in some of our private Colleges. But as for that Independent Jurisdiction which we are now struggling to preserve, it is a Thing common to every incorporated Society of Men professing Letters, that has by any Means attain'd to the Title of a *University*: It being every-where thought essential to the Constitution of such Bodies, that there should be always at hand a Power to administer speedy Justice, in order to suppress Dissensions and Quarrels among them in their first Rise, and much more to prevent their being taken off from their Studies, to attend elsewhere upon long vexatious Law-Suits, which instead of putting an End to any intestine Broils, will necessarily serve to foment and inflame them. Nothing certainly can be more inconsistent with that Tranquillity, without which it is impossible for such Communities to pursue the Design of their Institution.

For this Cause, when Universities were beginning to Form themselves, in order to retrieve this *Western* World from that barbarous State of Confusion in which it had been involv'd for two or three hundred Years before; that Great Emperor *Frederick I.* that he might secure their Repose, whom he foresaw like to contribute so much as they afterwards did, to the general Peace and Benefit of Mankind, set forth in the Year 1158, the famous Constitution for that Purpose, and order'd it to be inserted in the *Code*, where it stands to this Day, and hath ever since been reputed

puted Part of the Common Law of Europe. *Ambent. Habitu*
C. ne Filius pro Patre.

By Virtue of this *Ambent*, the Superior of every University, or the Bishop of the Place became the proper Judge in Causes as well Criminal as Civil; but more especially in *Causa Injuriarum*, wherein a Member of any such Body was concern'd as a Party on either Side. If a Stranger, and much more One of the same Body, brought an Action against a Member before another Judicature, he lost his Cause for that very Reason, were it otherwise ever so just. This Privilege hath been very much improv'd and enlarg'd by the Sovereigns of most Countries in *Christendom*, out of their tender Regards to the Schools of Learning; and that not only in the greater Universities, but in those likewise that are of less Note. That of *Louvain* cannot indeed be reckon'd among those of the lowest Class, neither is it of the first Rate. *Bislaus* tells of *John Duke of Brabant*, That when he erected this University, *Omne jus suum in senatum Academicum contulit. Hinc ibi Rector, in pote Academia Princeps*, says he, *omne jus in Scholasticos habet; Causas audit, decedit, multat, & grandioris noxae convictos punit vel Capite.* Hence doubtless came that University to obtain the Credit which it hath had in the World; That being the necessary Effect of good Discipline, which the Rectors with their Senate were hereby enabled to maintain.

It may not be amiss to take Notice in this Place, of a general Observation made by foreign Writers, which hath been more than once made good here in *England*, That they who design to subvert the Laws and Liberties of any Nation, commonly begin with the Privileges and Immunities of the Universities. This was *Duke D'Alva's* Method in the *Low-Countries*, when he caus'd the Young Count de *Bueren* to be seiz'd, while he was following his Studies at *Louvain*, contrary to the Privileges of that University, as all the Historians observe, which as barbarous an Act as it was in itself, was highly aggravated by that Breach of Privilege, even in the Opinion of the Count's own Father, *William the Ist of Orange*. For that magnanimous Prince, resenting, as he does in his celebrated *Apology*, with a Paternal Tenderness the Loss of his dear Child, cannot forget that the Privileges of *Louvain* were

violated by that Seizure, or forbear taking a Fling at the Barbarous *de Vargas* for his *non Curamus vestros Privilegios*. This, if I mistake not, was the same *de Vargas*, who upon another Occasion pronounc'd this with an impartial Brutality, *Hæretici fraxerunt imagines, Catholici non prohibuerunt eos; ergo omnes debent Patibulari*. By the Way, it is worth one's Notice, That there seldom arises an Enemy to our Colleges, to their Discipline, I mean; (for he who wou'd subvert That, does worse than if he attempted to batter down their Walls) but a Body may discern something in him, by which he bears a near Resemblance to this *de Vargas*, either in his Learning, or in his Manners, sometimes perhaps in both: A late and notable Instance of this Sort might be given in One, who had he liv'd at the same Time with *de Vargas*, might, for his Skill in *Grammar*, be thought to have gone to the same School. But *Grammar* of itself, I confess, does not always polish the native Roughness of some Tempers; no, nor *Criticism* neither; there may be those who have far excell'd *de Vargas* in both these Arts, and outgone him as far in the Barbarity of their Manners. To return,

I find the like Privileges that were granted to *Louvain*, to be enjoy'd by Academies of much less Note. They are pretended to at *Leipsick*, and possess'd by the Universities of *Ingolstadt*, *Tubingen*, and *Gissen* too, as I think. What good Use is made of them in these Universities, especially the last nam'd, is more than I can tell; nor do I know any more of *Gryphiswald*, but that I have read on this Occasion, of its having *merum & mixtum imperium* to the utmost Extent, as well as any of the rest.

To name some that the World is better acquainted with, which yet may without Dispraise be thought much inferior in Dignity to those of *England*, and are in some Respects as much more amply privileg'd. The Jurisdiction of this University extends not above a Mile beyond its Suburbs, nor that of *Oxford*, I suppose, much further. There is a Charter extant in *Rebuffus*, granted by *Charles VII*, (by Mistake said there to be the VIIIth) of *France*, whereby the *Rector*, *Doctor*, *Masters*, &c. of *Montpellier* are not only exempted from the Payment of Taxes, on account of their Patrimonial Estates, as well as of their Preferments, but have a Liberty to Convene those against whom they have
any

any Personal Action of Injury, Debt, &c. before the *Conservators* of the *University*, in Case the Defendants live within five Days Journey of the Place.

THE *Senatus Academicus* of *Leyden* has its *Merum & mixtum imperium* too, over all that belong to the University, who *tam in civilibus quam in criminalibus causis, sive Actores sint, sive Defensores, non nisi iudicium Rectoris subibunt*. This *Mæsterlius* quotes from the *Statutes* of that University, *Article 3*, Neque refert, adds he from the same *Statute*, *num Scholarum adversarij in urbe Leyda aut ejus territorio habitent, num alibi in Hollandia, Westfrisia, &c.* 'Tis true, that the four *Burgomasters*, and the two *Schepens* are joyn'd in Commission with the *Rector* and four *Professors*; but the Jurisdiction of those Magistrates consider'd as such can reach no farther than the Territory of the Town, which probably extends but half Way to *Delph* on the one Side, and to *Harlem* on t'other, that is about two or three Miles both Ways; but as they are *Assessors* to the *Rector*, their Authority is acknowledg'd everywhere within the utmost Bounds of the Province.

It is a Maxim in the *Civil Law*, That when any one is summon'd before an incompetent Judge, he is bound to appear, and may then make what Exceptions he shall see convenient to the Jurisdiction of the Court: But according to the *Jus Academicum*, as 'tis commonly receiv'd out of *England*, an *Academician* is bound not to obey the Summons, lest by his Appearance he should seem to betray the Privileges of that Body, to which he belongs. I choose to bring an Instance of this Doctrine from *Holland*; for if it prevails there, the Reader will easily believe, that it is not much disputed in other Countries. A Student in the Laws at *Leyden*, was su'd in the Sovereign Court of *Holland*; but as *Mæsterlius* tells the Story, took no Notice of the Court's Order for his Appearance, and as little Regarded the Sentence that was given against him, as being the Act of an Incompetent Judge. The *States* upon a Complaint made to them by the *Rector* and his *Assessors*, of this Breach of Privilege, order'd the Sentence to be revers'd.

THE Judgment that is once given by the *Rector* in that, and most other Universities, is final, and subject to no Appeal. But it is not so with us in *England*. Here in
Cambridge,

Cambridge, if a Man find himself aggriev'd by the *Vice-Chancellor's* Sentence, he may appeal to the *Senate*, who will appoint Judges to examine the Cause over again, and relieve him from any real Hardship. These are to be no less than Three, and no more than Five. They are nominated by the *Caput Senatus*, exclusive of the *Vice-Chancellor*, and by the Two Proctors, and are propos'd to the whole Senate. If any of them be excepted against, they are set aside, and others put up in their Place: This, if there be Occasion for it, is done a second, and a third time. In the mean while effectual Care is taken, that neither of the Parties concern'd shall do any Thing to influence the Nomination or Election. What better Provision can the Wisdom of Man make for the Impartial Administration of Justice? And what must that Man think of his own Cause, who dares not trust it to such a Judicature?

He doubtless thinks the same of it as other People do: But then he differs in Opinion from all the World, if he imagines that they who sit upon the *King's-Bench*, will screen him from Justice, and that too in a Cause which no Mortal hath ever yet undertaken to defend. It is the proper Business of that High Court to take Care that Justice have its free Course; and he may assure himself, that nothing is to be expected from thence that will obstruct or retard it.

As little Reason hath he to hope, that he shall be there upheld, or countenanc'd in any Infringement of our Rights and Privileges, least of all in so great and manifest a Violation of them, that I question much, whether a like Instance hath ever been heard of in *England*, or in any other Country. But let us see, what is, or can be offer'd in his Excuse, for breaking thro' the many Sacred Engagements that he is under to preserve and defend those Rights and Privileges.

I HAVE not, as I said, seen what was suggested to this Purpose in the Court of *King's-Bench*, nor, if I had, would this perhaps be a proper Way to answer it. Two Things have been urg'd in his Behalf by those who censure the Proceedings against him here in *Cambridge*.

THE first is, The late *Act of Indemnity*, which, as 'tis reported, was very much insilted upon, even in the fore-said Court, and that too, as 'tis said, in a very unusual Style.

Style. Some do not scruple to report, That the University was accus'd of *Insolence* on this Occasion. But that Report cannot be true, since the Reverend Judges are more sensible of the Respect that is due to so Venerable a Body, and of that which is paid to their own Persons, when they Honour us with their Presence in our Colleges, than to suffer such Language to be spoken with Impunity in their Hearing. However, the *Act of Indemnity* was doubtless urg'd. That being what they mainly insist upon, who blame the Proceedings here. And it is no great Wonder if the Court was somewhat surpriz'd, when told, with great Assurance, That a Criminal Process was begun here against a Fact known to be pardon'd.

THE second Thing is, The pretended Illegality or rather Absurdity of this Process. What more illegal than to proceed *ex Officio*, since by 16 Car. I, confirm'd by 13 Car. II, 'tis directly contrary to those Acts, to examine a suppos'd Criminal upon Oath, upon Interrogatories which he cannot answer without accusing himself? What is this, but setting up an Inquisition in the very worst Sense? Again, This Method of Proceeding, whenever it is in Use, is practis'd only in Cases of Sacrilege, Murder, Robbery, and other the most heinous Crimes; but never in any Cases like that which we are now considering: Lastly, Can any Thing in the World be more absurd than to summon a Man to appear before a Magistrate in order to give in his Evidence against — No Body?

I HOPE, those Gentlemen of this Place, who take so great a Liberty with their Superiors, will not complain of me for weakening their Objections: I have given them what Strength I can, and could almost wish, that I had something more to say in their Behalf; finding myself tempted to use *Tully's* Words: *Dare mihi aliquem ex robustioribus*. But by the way, What is there in all this, supposing it all to be true, which it is far from being, that can excuse this Complainant's Contumacy, in refusing to appear when legally summon'd before his Competent Judge, his Governor, to whom he hath sworn Obedience? Why could not this, or whatever else he had to say for himself, be alledg'd in the Vice-Chancellor's Court? If he lays Claim to his Majesty's most Gracious Pardon, why

why could he not there plead the Benefit of it? If an Oath were there unduely tender'd to him, was it not in his Power to refuse it? If Illegal Interrogatories were put to him, could he not forbear to answer them; or did the Thoughts of an Inquisition put him in bodily Fear of the Rack? In good earnest did he find the Vice-Chancellor to be so forward in the Prosecution of this Cause, as to apprehend that he should be condemn'd without being heard, or without any regard had to the abovemention'd Acts of Parliament? Were he really under any such Apprehension, yet this bare Surmise could never justify his Non-Appearance: For had such a hasty Sentence been pass'd upon him, he would in that Case have been at full Liberty to protest against the Iniquity, the Nullity of it, or whatever else he had to object: Or he might, by boldly saying, *I appeal*, suspend the Execution of such a Sentence, and which is more, his saying that single Word, would have forc'd his violent Judge to stop short in the midst of his Career; for had he proceeded a Step further, he would become highly criminal himself: And then the Way would have been open for this Complainant to seek his Remedy, not indeed from a Foreign Judicature, but from the Venerable Senate of this University. He would have receiv'd it at the Hands of select unexceptionable Judges appointed in the manner before mention'd, to revise the Process with Care and Candor, and to ease him of any Grievance that he should have cause to complain of. Had he suffer'd the Process to have taken this Course, and then remov'd it into *Westminster-Hall*, such a Procedure would have been thought *Monstrous* in other Countries; What must we think of his doing so upon his first Summons? But let us see what Truth there may be in the Allegations that are brought to justify so extraordinary a Conduct.

THAT a *Criminal* Process was begun here upon the Publication of the Libel complain'd of, is true; but that it was begun against a Fact then known to be pardon'd, is false. That Process began upon Complaint made to the Vicechancellor and the Heads in *Feb. 1723*, as appears by the Date of the Censure, which they pass'd upon that wicked and infamous Libel, many Months before the *Act of Grace* was heard or perhaps thought of. And were

were it not for certain Delays, which are not chargeable upon the Complainant, Sentence might have pass'd upon the Libeller, long before *Michaelmas-Term*, till after which the *Act of Grace* was not to take effect in Cases like this. But had that Process been continu'd after Publication of the general Pardon, or had it been begun then, I do not see why the Vice-Chancellor, or even the Complainant should be thought *Insolent* upon that Account. It is a Doctrine so universally receiv'd among the Lawyers, that it needs no Proof, That a Judge is not oblig'd to take Notice of a General Pardon, tho' pass'd in Parliament, unless it be pleaded, in Case there be Exceptions in it. The last *Act of Grace* was full of Exceptions. However, for the Sake of such Readers as are not conversant in these Matters, I shall give an unquestionable Authority for this Position: Of a general Pardon by Parliament without Exception, the Court ex officio must take Notice, saith Chief Justice Hales. He had said just before, He that pleads a general Pardon by Parliament, wherein are Exceptions, must aver, That he is none of the Persons excepted. *Pleas of the Crown*, p. 252. So that without such a Plea, and such an Averment, a Judge is not oblig'd to take Notice of the Pardon. But our Vicechancellor is oblig'd by his Oath, and the Duty of his Place, to do Justice according to his Power. And since the now mention'd Averment amounts to a publick Confession of the Crime in question, it wou'd, and will be a signal Act of Justice, if he can bring the suppos'd Criminal to That: For it will go a very great Way towards Clearing the injur'd Party's Reputation, when it shall be publickly known who it is that hath attempted to blacken it; since whoever knows the Man, knows what Credit his Allegations deserve, and will soon be made to understand what it was that push'd him upon so desperate an Attempt.

BUT the Process which is now on Foot, they'l say, commenc'd the 24th of November, after that the *Act of Grace* was publish'd, when the Complainant appear'd in Court, and implor'd the *Judicis Officium*: Which is true. But then they falsely call it a Criminal Process, as appears from these Words in the *Acts* of the Court, *petiitq; Jus & Justitiam sibi fieri*, which is not the Intention of a Criminal

minal Process, or of that which can in any wise be affected by the King's Pardon. A Criminal Process is begun and carry'd on *ad Vindictam publicam*, i. e. for the Punishment of an Offender, in order to satisfy the Publick for the Scandal given by his Offence. But that which is begun and prosecuted for no other End but the doing *Right* and *Justice* to an Aggriev'd Complainant, is a Process purely Civil, let the Act upon which he grounds his Complaint be ever so Criminal in itself; for in this Case, it is consider'd only as it is hurtful or injurious to the Party, who has a Civil Right to the Reparation of any Wrong or Damage that he sustains, thro' the Defendant's Fault. And be that Fault small or great, it matters not much to the present Purpose. The King, who can do no Wrong, can no more stop the Course of Justice, in such a Case, than he can detain or seize upon any Thing that a private Subject hath a Right in. Will any common Lawyer give it as his Opinion, That an *Action upon the Case* for slanderous Words which is brought into the *Common-Pleas* or *King's-Bench*, is a Criminal Action; or that the *Act of Grace* is a Bar to it, when brought thither for no other End but the Recovery of Damages? Or will it look insolent in the Man, who notwithstanding any Thing contain'd in that *Act*, shall commence a Suit in *Chancery* for an Estate he stands depriv'd of, by means of forg'd Deeds, or any other villanous Practises? The Impostor, the Falsary, or whatever else he may be call'd, who was guilty of the Fraud, may by Virtue of this *Act* have his Crime pardon'd, so far as that his Ears shall be safe; but the injur'd Plaintiff shall not therefore be kept out of his Estate. For were that the Effect of His MAJESTY's most Gracious Pardon, His Mercy to the Wicked, would in many Cases prove most Cruel to the Innocent. Honest Men must lose the Benefit of his Justice, that Malefactors may be taken into his immediate Protection. But the Gentlemen of the *Long Robe* know better Things, and tell us that so far as a Private Subject hath an Interest in any Cause, the King's Pardon cannot reach that Cause, or have any Effect to the Injury of another. *Sine præjudicio Tertij* is a Clause so necessary in all Concessions of Favour, that if it be not express'd, 'tis ever understood: So that such Grants shall never touch any Man's Property; or defraud him.

him of what would otherwise be his Due. Now if there be nothing in this World, in which an honest Man hath a more indefeasible Right, Property, or Interest, than his Good Name, a General Pardon can no more deprive him of that, or which is the same Thing in Effect, of any lawfull Means to recover it, than it can enable a Robber to plunder his Goods, or turn him out of his Estate. For as it is a continu'd Act of Injustice, to detain what hath been unjustly taken from another; so to indemnify the Wrong-doer, or excuse him from making Restitution, is much the same as to put him upon doing it, *Ratibabitio retro trahitur & mandato aequiparatur.*

THERE is a strange Doctrine got into *Westminster-Hall*, where it hath prevail'd for above these Hundred Years past, as it is like to do for these Hundred Years to come, unless my Lords the Bishops shall think to fit take Notice of it in Parliament, *viz.* That the King's Pardon shall put a Stop to any Process carry'd on in the *Spiritual Courts*, for the *Reformation of Manners*, or the *Salvation of a Man's Soul*! Hence the Learned in the Laws tell us, that Causes of Defamation in those Courts shall cease immediately upon every *Act of Grace*: For that such Suits are brought thither, for no other End or Purpose, but to inflict Punishment on the Offender *pro salute animæ*. "Which Punishment, say they, the King may pardon as well before as after the Suit began, because, as they add, *Such Suits are in Truth only for the King*, altho' they be prosecuted by the Party". It has been likewise Resolv'd, "That all Proceedings in the *Ecclesiastical Court* *ex Officio* are for the King. For which Cause whatsoever the Suit is there, the King may pardon it. For they are only to correct and punish the Party, for the Offence or Sin, which the King may pardon, and not for the particular Interest of the Party. *Hall's Case, Co. 5. Fol. 51.*

I expected to have this Doctrine thrown in my Way, and have therefore given it in my Lord *Coke's* own Words. But supposing the Truth of it, which I shall not here dispute, I hope the Reader will not think it at all applicable to the Case in Hand, if he shall consider,

1st. THAT they are *Temporal Courts*, which are held in the Universities, Commission'd to Hear and Determine

-such Causes as are for the most Part *purely* Civil, and grounded upon Actions of Debt, Accounts, Contracts and Injuries, as well as of some few Misdemeanors of an Inferior Nature. They have indeed Ecclesiastical Jurisdiction added to their Commission; but this Addition is Cumulative only, and in no respect Privative: For it takes away nothing of the Powers and Authority which the Judges of these Courts might exercise without it.

2dly, That the Design of the Suit, which is now in Question, is not the Offenders Punishment: No nor yet the Reformation of his Manners; The Plaintiff in this Case being convinc'd by this Time, how vain an Attempt it would be for him, to bring that Offender to condign Punishment, and much more to correct and amend his Manners. All that he pretends to by this Suit, is the Recovery of his own Good Name, of which the said Offender, so far as in him lies, hath injuriously, I will not say Feloniously robb'd him, so that the Libel is now to be consider'd only as it is *injurious* to the Complainant, and not as it is a *Nororous Violation of the Statutes of this University, or Contrary to Good Manners.*

3dly, THAT by the Laws of this University, which are as valid, in respect to us, as King and Parliament can make them, the Party aggriev'd hath an Action *ad Pali-nodiam* and *ad Estimationem Injuriae*, which Actions are both of them purely Civil, and may be accumulated: Nor is the Kings Pardon any more a Bar to either of them, than it is to an Action upon the Case for Words in the *Common-Plas*, or to any Suit in *Chancery*. To prevent future Cavils, I shall here add, That neither of these Actions when grounded upon a *Libellus famosus*, is limited to any certain Space of Time, but they may be brought against the Libeller at any Time, whensoever Justice can be had; the Reason is, because Injuries when committed to Writing, (and much more when Printed and Publish'd to the World) have a *permanent* Effect, which lasts as long as the Libel, and not a *transient* one, like that of mere Verbal Injuries, against which an Action will not lie beyond the Space of a Year, if thro' the Plaintiff's neglect, the
Defendant

Defendant hath not been summon'd to appear before the Judge, till after the Year was expir'd.

4thly, THAT Proceedings *ex Officio*, whatever they may be in *Ecclesiastical Courts*, are no more for the King, or begun at his Suit, in *This*, than those which are carry'd on by any other Method. They are here very seldom directed *ad Vindictam publicam*, but most commonly *ad utilitatem privatam*, which are the Terms us'd by the Lawyers to distinguish between a Criminal Action and a Civil.

WHATEVER is yet wanting to clear these Points, will, if I mistake not, be fully made out by the Answer which I shall now make to the Objections against the Legality of our Vice-Chancellor's Proceedings in the present Case. In order to this, I shall shew, 1st. By what Law, 2dly, In what Method, 3dly, After what manner he is to proceed. I shall then shew the Conformity of his Proceedings in the present Case, to those Directions.

First, By what Law. The *Charters* direct, that the Judge of this Court shall proceed according to the Laws and Customs of the University, *Secundum leges & Consuetudines prædictæ Universitatis*. The *Statutes* say, That *Cancellarius potestatem habebit, omnes omnium Scholasticorum controversias, secundum Jus Civile, & eorum Privilegia & Consuetudines, tum audiendas tum dirimendas, c. 42.* Note, That the Power given to the Chancellor devolves in his Absence upon the Vice-Chancellor.

So that our *Law* here is Threefold, consisting

1st, Of the *Laws* or *Statutes* of the *University*.

2dly, Of its *Customs* and *Usages*, which being Uniform and Constant, make up our *Jus Consuetudinarium*: And That, when not repugnant to any *Statute* of the Realm, be it otherwise ever so dissonant from the *Stile* and *Practice* of other Courts, is as good *Law* in this Court, as what they call the *Common-Law*, is in *Westminster-Hall*.

3dly, THE

3^{dly}, THE *Civil-Law*, which as the Reader sees, is prescribed in the *Statute* absolutely, and without Restriction, so far at least, as it is consistent with the Laws, Customs and Privileges of the *University*. So that whatsoever was allow'd to be *Civil Law*, in the 10th Year of Queen *Elizabeth*, when our *Statutes* were given; or rather in the 13th of the same Reign, when both *Statutes* and *Charters* were ratify'd in Parliament, i. e. whatsoever is contain'd in the *Corpus Juris Civilis*, or was then agreed upon in any Case to be *Law* by the *Civilians*, and is not inconsistent or repugnant, as aforesaid, the same is *Law* to us, in any Case proper for the Cognizance of this Court. Nor is it more or less so, for its being or not being receiv'd in any *Spiritual Court*, in the *Earl Marshal's*, the *Admiralty*, or elsewhere.

It is observable, That such of our *Charters* as have been consulted on this Occasion, mention only our *Leges & Consuetudines*, but say nothing of the *Civil-Law*, which seems to have been first prescribed to us by our latest *Statutes*, and to have been antiently little regarded in our Judicial Proceedings, further than it makes up the Deficiencies of the *Canon-Law*, according to which, this, as well as other *Universities*, was formerly govern'd. It is certain, that the constant Usage of this Court, is much more agreeable to that than to the *Civil-Law*. There hath always been a great Conformity between our *Universities* and that of *Paris*; but it was long before the Study of the *Civil-Law* was permitted in that, and much more the Practice. The Design of inserting that Clause in *Q. Elizabeth's Statutes*, seems to have been in order to promote that Study in this University. The Want of *Civilians* here in *England*, had some Time before been much complain'd of, Men of that Profession being then thought the best qualify'd to manage our publick Affairs in foreign Parts, where the *Civil-Law* generally takes place; and to supply this Defect a Project had been on Foot to appropriate some one or more of our Colleges to that Study. But that appearing to be unjust, as being inconsistent with the *Wills* of the Founders, it is probable, that this Course was taken in order to make our Court become a
Seminary

Seminary of *Civilians*, since our Colleges could not. But be that as it will, the *Civil-Law* is now become the *Law* of this University, and that by Act of Parliament, as was not long since observ'd by a Learned Judge upon the Bench in his Circuit here at *Cambridge*.

2. THE Method of Proceedings prescrib'd by our *Charter*, which the Reader is desir'd to take particular Notice of, is a twofold Inquiry to be made, either *ex Officio*, or at the Party's Suit, either of them to be us'd upon Occasion, as shall be thought convenient, whether the Causes be Civil or Criminal. For after Commission given to the Judges of this Court, to take Cognizance of the above-mention'd Personal Actions, it follows: *Et quod de hujusmodi Actionibus, Querelis, sectis & Transgressionibus tam ex Officio, quam ad sectam Partis— Inquirant & cognoscant, audiant & finaliter determinent*: where the Words *tam ex Officio, quam ad sectam Partis*, promiscuously referr to all the foregoing Actions, Plaints, Suits, and Misdemeanors alike. So that according to this *Charter*, the Vice-Chancellor is empower'd; and, if Occasion shall require, oblig'd to proceed *ex Officio*, in Causes of Contract and of Injuries, as well as of Misdemeanor and Trespafs. Accordingly, whoever will consult the Registers wherein the Acts of this Court are recorded, will find him frequently proceeding *ex Officio*, in Causes merely Civil, as in determining Differences between Master and Prentice that are of a Priviledg'd Trade, and Cancelling Indentures, as he sees Occasion, &c. In Causes of Injury, the Plaintiff implores *Dni. Officium* in Course, as a Matter of Common Form, when he acts only *ad Estimationem Injuriae*. We find the Judge of this Court pursuing the same Method in Criminal Cases; yet very seldom *ad vindictam publicam*, but most commonly in order only to satisfy the Party griev'd. Thus Dr. Cowel, the famous Lawyer, when acting as Judge of this Court, proceeds *ex Officio promoto* against one *Armstrong*, a Townsman, for having caus'd his Neighbour's Wife to be convey'd away with some Goods of the Husband, and having strictly Interrogated the said *Armstrong*, *super præmissis, omnibusque alijs Circumstantiis concernent' hanc causam, et ad Officium Dni. Judicis spectant'*, makes him sign a Bond for his Appearance, not to the King, or to the Chancellor,

Chancellor, which he would have done, were this a Criminal Process, but to the Husband, as if the Cause was purely Civil.

If the Judge of this Court proceeds Criminally *ex Officio*, he takes Care at the same time to satisfy the Party griev'd: Of which I shall give one Instance, for a Reason obvious enough.

Novemb. 26. 1641. Officium Dni. contra Thomam Broughton in causa violationis Privilegiorum Universitatis.

Broughton a Townsman had arrested in London one Sanders another Townsman, but a Privileged Person. For this he is condemn'd to pay Sanders's Expences, tho' that I confess was but a small Matter, as well as to make a Publick Recantation for his Offence to the University.

Decembris 3tio. Comparuit Broughton, & peregit penitentiam prout in Scheda.

HERE it may be observ'd, that in a Criminal Process begun and carry'd on *ex Officio mero*, Justice was done to the Party griev'd, as well as upon the Offender. But I have singled this Instance out of many on Account of the Date. The Act to abolish the Oath *ex Officio* as administered by Ecclesiastical Judges, and by them only in Criminal Causes, had pass'd in the Beginning of July the same Year: And none were then so silly as to imagine that all Proceedings *ex Officio* were abolish'd together with that Oath. But it much better deserves our Notice, That the University was not in a Condition at that Time, to insist upon Privileges, which were not strictly her due; or which she did not think necessary to her Preservation; being not insensible of that dreadful Storm, which had been for some Time a gathering, and was then just breaking upon her Head; nor of the Watchfulness of her Enemies to catch at every Thing that might give them the least Advantage over her. However she was resolv'd, not to be *Felo de se*, as she will prove in Effect, if ever she gives up, or abandons her *Peculiar Jurisdiction*: That being the Life and Soul of such Bodies, without which it is impossible for 'em to preserve themselves. For this Cause we find those who have govern'd her, always taking the alarm upon the least Infringement of that inestimable Privilege. Were They alive now who, notwithstanding the Danger they were in,

in as to their own Persons, had the Courage to animadvert so severely as they did, upon a *Townsmen*, it is not likely, that they would overlook in one of our own Members, one of their own Number, an Offence of the same Kind, but infinitely greater in Degree, than *Broughton's* was, and that not the First neither, nor perhaps the Second of the Sort.

THE last Thing which I am to account for, is the Manner in which our Vice-Chancellor ought to Hear and Determine Causes. In this respect, he is directed by our *Statutes* to proceed *Summarie, omni Juris solemnitate Semota, & sola Facti veritate inspecta*. So that This, if there be any such Thing in the World, is a true Court of Equity, and of Conscience. All Tryals here are what the Ancients call'd *Bonæ Fidei Judicia*. The Judge, if he will do his Duty, must determine *ex æquo & bono*, according to the plain Truth of the Case, which way soever he comes to the Knowledge of it; and when he does so, his Sentence shall be valid to all Intents and Purposes of Law. In the Ordinary Courts the Judge can do nothing against or besides what appears from the *Acta & probata*; but here he must always keep his Eye upon the real Merits of the Cause, and upon them only, proceeding to Sentence *sola facti veritate inspecta*. So far is he from being ty'd up to those Formalities, that are necessary elsewhere, and which, tho' design'd to direct the Course of Justice, often obstruct, and not seldom pervert it. That he is bound not to observe them any further than they really serve to clear up the Matter in Question, and set it in a true Light, by giving the Parties an Opportunity to say what they can for themselves, and produce what Evidence is to be had on either Side. But then for those nice and curious Pleadings, which make nothing to the main Question, he must not so much as hear them; less can he give Ear to such dilatory Exceptions and Cavils, as are intended only to keep the Matter from coming to an Issue. Other Courts have their *Fatalia*, as they call them, which shall stifle a good Cause in its Birth before it can be so much as heard; but here is no such Thing as finding Flaws in a Declaration, nothing like Quashing Indictments. Let the Parties or their Proctors manage their Matters ever so unskillfully, the Judge will
D suffer

suffer no Advantage to be taken at their Mistakes on either side. If the Actor's Petition hath any Thing in it that is not to the Purpose, it shall never vitiate that which is; or if the whole be irregular, the Judge will not be excus'd on that Account from giving Sentence according to Justice and Equity; and a Sentence so given, if an Appeal be made to the Senate, will stand against all Exceptions that shall be made to the want of Formality.

I Do not say all this without Book, but have sufficient Authority for it. The Clauses by which the Manner of our Judicial Proceedings is prescrib'd, were not invented by the Compilers of our Statutes; They had long before been us'd by the Lawyers, to signifie the utmost that I have now said. They seem to have been most frequently us'd by the Canonists, and to have been borrow'd from them by the Civilians. The last Chapter of the Clementines is taken up in explaining Terms that are of a like Import, but not so expressive: Such as *De plano, sine strepitu ac figura Judicii*. And 'tis there declar'd, That when any of these Terms are inserted in a Commission, it is to the End that, *Judex necessario Libellum non exigat, Litis contestationem non postulet in tempore etiam feriarum ob necessitates hominum indultarum, a jure procedere valeat; amputet dilationum materiam; Litem quanto poterit faciat breviorē; Exceptiones, Appellationes, dilatorias & frustratorias repellendo, Partium Advocatorum, & Procuratorum contentiones & jurgia, restitumq; superfluum multitudinem refrænando. Non sic tamen Judex litem abbreviet, quin probationes necessariae & defensiones legitimae admittantur* — in ipso litis exordio, *Petitio faciendā, sive scriptis sive verbo: Actis tamen inferendā* — *Interrogabit etiam Partes, sive ad earum Instantiam sive ex officio, ubiqueq; hoc æquitas suadebit: Sententiā vero distinctivā (citatis ad id, licet non peremptoriis, Partibus) in Scriptis, & prout magis sibi placuerit stans vel sedens proferat (etiam si ei videbitur) Conclusionē non factā, prout ex Petitione, & probatione & aliis actitatis in causā, fuerit faciendum.*

MARANTA shewing the Difference between *Judicium Ordinarium* & *summarium*, says, That the former *Tractatur Juris ordine servato scilicet, præcedente libello, interveniente litis contestatione, publicatione & conclusionē, cum aliis solennitatibus juris positivi, sine quibus Judicium esset nullum.* But that *Judicium summarium est quod tractatur sine solennitatibus prædictis.*

Actu. He says, That by Virtue of the Clause, *sine figura Judicii* (which is not more expressive than *omni juris solemnitate semota*) a formal Libel is not requir'd, but only *talis qualis Petitio*, which may be admitted, tho' it be general and uncertain, or only verbal, or *inepte composita, dummodo ex ea possit discerni quid Actor velit*. And lastly, That the Clause, *Sola facti veritate inspecta, plus importat quam omnes illæ Clausulæ, summarie, de plano, sine strepitu & figura Judicii*, and that by Virtue of it, *potest ferri Sententia non conformis Libello; & sic super aliis quam petitis*. Port. 4. Distinct. 9. *Marranta's* Authors are *Bartolus, Baldus, Cynus, Lanfranc*, with a great many more; and if the Reader will be at the Pains, he will doubtless find him to be follow'd by as great a Number; for those Authors transcribe one another, & *qui unum nōrūt, omnes noverit*.

IN effect, it is a Maxim among the Lawyers, both *Civilians* and *Canonists*, That in a Summary Process, *Juris Ordo est non servare Juris ordinem*. They have another Maxim too, which says, That in *Academical* Judicatures, all Proceedings ought to be *Summary*: So far are the abovemention'd Clauses from being Peculiar to our *Statutes*. Due Care is taken Abroad as well as with us, that they who preside in such Judicatures, shall not be over-observant of those prohibited Formalities. The *Rectors* of foreign Universities, like our Vice-Chancellors, being commonly Men of that Profession, which supposes them to be well-instructed in the Moral Rules of Justice and Equity, and ignorant of the nicer Quirks and Subtilties of the *Law*, and whatever else may give Occasion to *Chicanerie*. And to prevent their Learning them, the *Rectors* are not suffer'd to hold their Places above three or six Months. Our *Statutes* have made as good, or a better Provision against their being brought into Practice among us, by ordering, That the Parties shall plead their own Cause, except they have some great Occasion for Assistance; and that every Cause shall be determin'd *infra Triduum si fieri potest*. If a Practice contrary to the manifest Intention of the *Statutes* in this respect, hath at any time been introduc'd, that is what the Lawyers will call *Corruptela*, and not *Consuetudo*.

I HAVE insisted the longer on this Head, not on account of any great Occasion there is for it in the present Case; for if the Vice-Chancellor hath committed any Mi-

stake in this Case, it has been by too nice an Observation of the ordinary Forms of Proceeding ; I have done it rather to shew, That had he wholly neglected those Forms (such of them I mean as are *Juris positivi*) that could be of no Prejudice to the Cause. But that an Error of this Kind, whether it be on the Right Hand, or on the Left, should prove so fatal to the Cause, as to disable or excuse any Judge or Magistrate from doing Justice according to the real Merits of it, is what one would think to be impossible for any Man of Sense to believe, had not something like it been affirm'd.

SUCH then are the Instructions and Directions which our Vice-Chancellor is oblig'd to follow in his Judicial Proceedings. So that the Question now under Consideration, is This, and no other, Whether what he hath done in the present Case, which some Gentlemen have given themselves the Liberty to Censure, be agreeable or consistent with those Instructions and Directions, or not ? If it be, our Vice-Chancellor hath the supreme Authority of King and Parliament for what he hath done, and there is not any other Power upon Earth that can controul him : If it be not, how come these Gentlemen to know so much ? Have they carefully perus'd and examin'd our *Charters* and our *Statutes* ? Have they search'd our *Registers*, to know what hath been the constant Usage of this Court from Time immemorial ? I have good Reason to believe, that not a Man among them will pretend to all this. Have they consider'd what the *Civil-Law*, as contain'd in the *Pandects*, the *Code* and the *Institutes*, or as universally understood and practic'd all the World over long before the Date of our last *Statutes* : Have they consider'd, I say, what the *Civil-Law* prescribes in any Case like this ? The Reader will presently judge, whether they have done so much as That. How then came they to pronounce these Proceedings to be illegal with so much Assurance, as some have done ? Why the Common Lawyer will tell you perhaps, That he never observ'd the like in all his Practice, whether at the *King's-Bench-Bar*, or in the *Common-Pleas*. The *Chancery* Man may say the same ; and so possibly will the Practitioner at *Doctors-Commons*. But if that be a Reason, why any of our Proceedings here should

should he thought illegal, will it not justify a Gentleman us'd to any one of those Courts, if he shall pass a like Judgment upon what he shall see done every Day in the rest? These Courts have, all of them, their peculiar Methods and Rules, by which they differ from each other, as much perhaps as any one of them does from this of ours: But should we here upon account of such a Difference, take upon us to condemn their Proceedings, it would doubtless be thought, what I am unwilling to name, because those Gentlemen who are so free of their Censures, may possibly take it to themselves. This is certain, That the Acts of all Courts which are establish'd upon so firm a Foundation as ours is, are all of them alike Legal, if they shall be conformable to their respective Rules and Methods: Let these be ever so various among themselves, or inconsistent with those prescrib'd to any one in particular. Sir *John Vaughan*, if I mistake not, was esteem'd by our Fathers for one of the greatest and wisest Men that ever presid'd over the Court of *King's-Bench* in their Time. This Gentleman in a memorable Speech made by him, when a Member of the House of Commons, says, " That there are in the Land many different Laws, and Proceedings in these Laws, and Imprisonment upon them: And yet not one of them by Presentment, Indictment, or Tryal by Peers. " Of these he reckons up no less than Seven distinct Sorts, all different from the *Common-Law*, as that is contain'd in the *Great Charter*; and concludes, that to urge *Magna Charia* against them, would be absurd. But let us see whether or no our Vice-Chancellor hath in Truth departed from the now mention'd Directions; or indeed from the Rules, Method, or Manner of Proceedings that are us'd to direct the Course of Justice in this Land, or in any Court, or Country whatsoever.

THE Letter of the *Statutes* 16 *Car.* I, and 13 *Car.* II, which abolisheth the Oath *ex Officio*, does not extend to him, as he is Judge of a *Temporal* Court: But the Equity of them does, as he is a Judge of Criminal Causes, it being against all Reason, that a Man should be put to his Oath, when he may hope by Forswearing himself, to avoid the Punishment due to any great Crime. The *Civilians* I am sure loudly declaim against any such Practice, as a very great Abuse; ;

Abuse; and 'tis as true, That few Crimes are more abominable in the Eye of the *Civil-Law*, than that of an Infamous Libeller. So that it is hard to guess, upon what Grounds such as have any Knowledge in that Law, shou'd imagine that the suppos'd Criminal in this Case wou'd be examin'd upon Oath. This I have some Reason to know, that there was no such thing design'd against him, or those that were to be summon'd after him, in order to their Examination upon the general Enquiry: Because the *Civilians* say, That in such Enquiries, which are only preparatory to a formal Tryal, *Testes audiuntur injurati*. The Person suspected, if any such there be, being not *receptus in numerum reorum, quamdiu Inquisitio illa preparatoria durat*. *Anton. Matth. p. 871.* And *Carpzovius*, who was consulted on this Occasion, says, That these previous Informations ought to be taken *absque Juramento*, *Pract. Crim. P. 3. §. 107.* Its true indeed, that when this Cause comes to be prosecuted *Civiliter*, it may be a Question, or rather will be out of Question, Whether the Defendant ought not to give in his Answer upon Oath, according to the constant Usage of this Court, as well as that of *Chancery*, when the Defendant is charg'd in the Bill preferr'd against him, with any fraudulent, or otherwise Criminal Practices.

I SUPPOSE the Reader will not expect any direct Answer to their Objection, who pretend that all Proceedings *ex Officio* were abolish'd together with the Oath; for were that true, there must have ensu'd a general Failure of Justice throughout the Nation. There would be little for the Judges to do in their Circuits, at the *Crown Bar* at least; no Occasion for Grand-Juries, or King's Council; Justices of the Peace would bear a useless Office, and so would the Constables too in a great Measure. Coroners would have nothing at all to do, for whatsoever is done by these or any of them towards rectifying Enormities, redress of Grievances, and bringing Offenders to Justice, is little else but the Result of Enquiries made *ex Officio*. There is only This Difference between those Enquiries and that which our Vice-Chancellor, when *Inhibited*, was upon, That when the Grand-Jury, Justices of the Peace, &c. take Informations, preparatory to a formal Tryal, they examine upon Oath those they call before them. Our Vice-Chancellor design-

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ed only to examine *Injuratos*. Let the Reader then judge which of the two does most resemble what we commonly call, *The Inquisition*. Were it not for such Enquiries, and the Proceedings upon them, the Government Ecclesiastical would suffer no less than the Civil: Did not our *Archdeacon* exert the same Vigilance in making them, and Proceeding further upon them, when made, as he does in keeping up good Discipline elsewhere, His Annual *Visitations* would serve for no other Purpose so much as to screw Money from the Poor inferior Clergy; a Sort of Traffick which *Escobar*, *Caramuel*, and *Diana* would be apt to call by a very hard Name.

A GREATER Regard is due to the Objection of those Learned *Civilians*, who allowing of this Method of proceeding in certain Cases, think it to be proper only when such Crimes are committed, which are of a quite different Nature from that now under Consideration: And, to say the Truth, all the Texts but One, that occur in the *Corpus Juris Civilis*, by which the Magistrate is empower'd to enquire after Criminals, by virtue of his Office, are of their Side. But That One makes so directly to the present Purpose, that it seems to be fitted for the very Case in Hand. It is l 6. ff de *Injuriis & famosus Libellus*. *Ulpian* in the preceding Law, §. 9. had said, *si quis Libellum ad Infamiam alicujus pertinentem scripserit, composuerit, ediderit, dolove malo fecerit, quo quid eorum fieret, etiam si alterius nomine ediderit vel sine nomine, uti ea de re agere liceret, & si condemnatus sit qui id fecit, instabilis ex lege esse iubetur. Eadem poena ex Senatus consulto tenetur* — *Paulus* here adds, *Quod Senatus consultum necessarium est, Cum nomen adjectum non est ejus in quem factum est. Tunc ei, quia difficilis Probatio est, voluit Senatus publica Quaestione rem vindicari*. I leave the Reader who knows any thing of the Case, to make the Application; and shall only add that *Gosbored* upon the Place, says, That in this Case the Judge may summon in such Persons as he thinks capable of giving Information. *Licet Judici provocare Indices & Delatores*.

THIS Text excepted, I know of no *Ancient Law* which enabled the *Roman Magistrates* to proceed *ex Officio* in any Case whatsoever. For indeed whilst the *Republican Government* lasted, there was but little Occasion for such a Method

Method of Proceeding: There being then no want of them, who upon all proper Occasions were ready enough to call upon those in Authority for Justice. Private Citizens had an easy Access to Magistrates of their own Creation, and could freely lay open their Grievances without Expence or Trouble. Or there were those who would gladly do it for them, without a Fee, in order only to secure their Votes upon Occasion. Nothing render'd a Young Gentleman more popular, or clear'd his Way to Preferment and Honour, so much as his Undertaking to accuse and bring some great Offender against the Laws to Justice. When the Government was turn'd into an absolute Monarchy, the People who had no longer a Share in it, were little concern'd to have the Laws put in Execution, which then began to be accommodated to the Interest of those who had the Power in their Hands, being so contriv'd, or executed at least, as might best serve their Purposes, and were in Effect, what a certain Person told some of the most eminent Men in this Place, Statutes ought to be, consider'd only as they made for the Conveniency of those that govern. However they were not wanting under the worst of Tyrants, who were no less forward to inform and to accuse such as offended against those perverted Laws, than good Patriots had before been to put the best in Execution. For whenever there is a *Tiberius* or a *Domitian* in Power, he seldom fails to find or make others as bad as himself, whose Business will be to serve him as Spies upon those he has a Mind to destroy, who shall give him an Account of their *lonely Walks*, and tell how they *sleep a Nights*: These Sycophants shall dogg unhappy Wretches, into their most secret Haunts, and finding them obnoxious in any Respect, threaten them with immediate Ruin, not in order to reclaim them, but to bring them over to the Tyrant's Interest, as they call it, and by that means make them Ten Times more wicked than they were before.

BUT good Princes, as they never fail'd to sacrifice those Instruments of Tyranny to the Peoples Resentments, so they took effectual Care for a due Administration of Justice. Among other Provisions for that Purpose, we find in the lower Empire, certain Magistrates planted up and
down

down in the Provinces, call'd *Stationarij* and *Irenarchæ*, whose Office as well as this latter Name, much resembled that of our Justices of the Peace. *Qui ad Provinciarum tutelam, quietis ac pacis per singula territoria faciunt stare concordiam, lunic. C. de Irenarchis.* Their Charge was to enquire after, and take Informations concerning Malefactors, and to send them with Accounts of their Crimes to the Superior Magistrate. The Governors of Provinces had it likewise in Charge, to make such Enquiries. *Congruit bono & gravi Præsidi, curare ut pacata atque quieta sit Provincia quam regit; quod non difficile obtinebit, si solícite agat ut malis hominibus Provincia careat, Eosque conquirat. Lib. XIII. F. de Off. Præsidi.*

THIS Text is copy'd out after the following manner in the *Reformatio Legum Ecclesiasticæ*. which tho' it has not the Sanction of a Law, is yet of greater Authority than the Opinion of Twenty Doctors, to shew that a like Method of Proceeding is perfectly agreeable to our *English* Constitution, *Congruit bono & gravi Judici, ex Officio suo curare ut pacata, & quieta, & ad pietatem dedita, Jurisdictio sit quam regit, quod non difficile obtinebit, si solícite de malis hominibus conquirat, & prout quisq; deliquerit, in eum animadvertat; Itaque fama vel indiciis potest Judex descendere ad Inquisitionem.*

IN short; This came by Degrees to be the ordinary Method of Proceeding in Criminal Cases, and Civil too, wherein the Aggriev'd had no other Way to find Redress, and was long before the Date of our *Charters*, generally practic'd all over *Europe*, as well as in *England*, as it would be easy to shew, were that my proper Business. They who desire to be further satisfy'd in this Point, may, if they please, consult *Julius Clarus* and *Carpzovius*, or indeed any other Writer that treats upon the Subject. For their present Satisfaction, who question, Whether this be a proper Method to proceed by in *Causa Injuriarum*, I shall transcribe the following Testimony of the last nam'd Author, *Stante igitur sententia hac, sequitur Judicem hodie etiam ex mero Officio ad Inquisitionem criminum & delictorum procedere debere, adeo ut negligens Officium facere, ipsemet crimine non levi se obstringat. Quis ergo negare vellet Judicem ex Officio contra Reum Injuriarum procedere, eique pœnam arbitrariam*

Ultrariam imponere debere? Præsertim si ab injuriato Officium ejus fuerit imploratum. Carpz. p. 2. 296.

BUT supposing it to be still questionable, Whether that Method may be us'd in such a Case by the Judge of any other Court? No Doubt can be made of it in respect to any Academical Judicature, particularly to this of ours. *Inquirit Judex ex Officio de Injuria facta Scholari, & in isto casu est speciale quod Judex sine Accusatore inquirat de privato crimine*, says *Maranta de Inq. n. 159*, adding, *Ita tenet Baldus in Authent. Habita. Pro Injuria Scholaribus illata, Judex ex suo Officio procedere & inquirere potest, nemine petente*, saith *Rebuffus, Priv. 105. Locorum Rectores possunt & debent de Injuria Scholaribus illata inquirere atque ex Officio procedere*, says *Lutius, p. 98.* and quotes a great Number of Authorities for it; tho' he, as well as *Maranta*, is of Opinion, That this is a peculiar Privilege belonging to Members of Universities.

That the Judge of this Court may, and ought so to proceed upon Occasion, none I believe will henceforth make the least Doubt, who shall again consider the Words of our *Charters, Tam ex Officio quam ad sectam Partis Inquirant*, referring, as they plainly do, to Causes of Injury, as well as to any other that is Cognizable in this Court; and if we consider the Reason of the Thing, to such a Cause rather than to any other: To this agrees the constant Usage of the Court, where the Aggriev'd in *Causis Injuriarum, i. e.* of Defamation, which take up a very great Part of our *Registers*, implore of Course, as I have said, the *Judicis Officium*. But to omit nothing that may serve to remove the Scruples of those Gentlemen, who think this Method to be proper only for Crimes that are of a deeper dye than that which gave Occasion to the Proceedings which are now call'd in question: I can assure them, That if they will be at the Pains to open our *Registers*, they'l there find the Vice-Chancellor, or his Deputy, sitting in Judgment twice or thrice in the Week, and Determining Causes of all Sorts, that come within his Cognizance, according to this Method; there being no Grievance so small, whether Publick or Private, to which he does not of his own Motion apply a proper Remedy: No Offence so slight against the Publick Laws, the Statutes and Privileges of the University, or Good-Manners, which he does not animadvert upon *ex Officio mero implorato vel promoto*. He calls Masters

sters before him for ill-using their Apprentices, and Apprentices for disobeying their Masters; Victuallers for selling in scanty Measure, or without a Licence; Fencing and Dancing-Masters for setting up School within his Jurisdiction; Townsmen for going a Coursing or Shooting with Scholars; Scholars for being out of their Colleges at unseasonable Hours, or for any Petulance they may have been guilty of in their publick Exercises. A Townsman calls his Neighbour's Wife by an ugly Name, the Vice-Chancellor's *Officium* is implor'd upon the Occasion, the Offender is call'd before him, the Party griev'd is admitted *ad Estimationem Injuriae*, which the Vice-Chancellor moderates according to his Discretion, and sometimes condemns the injurious Person to a publick Recantation, &c.

IF for the Reason now mention'd, the Judge of this Court cannot proceed *ex Officio* in the present Case, the same Reason may be urg'd more strongly against the Use of that Method in any other Case: And then the Clause in the Charter *ex Officio inquirant*, will be brought to signify nothing at all: There being no Offence or Grievance that can come within his Cognizance, which is not of an inferior Nature to this Crime. *Felony* and *Mahim* are excepted out of his Commission. And surely Stealing to the Value of a Crown, or slightly Wounding a Man's Person, are not of a more heinous Nature, than Defamation and Calumny. *Moralists* account Crimes of this Sort, to be more Atrocious than any Robbery, and to come little short of Murder, as every Ingenuous Man sets a greater Value upon his Credit than upon his Money, and in some Cases, as great or greater than on Life itself. Libelling hath ever been accounted the most criminal Sort of Defamation, as it spreads the Scandal farthest, and makes it last the longest. By the Law of the Twelve Tables, it was a Capital Crime, as it is according to the latest Rescripts of the Code. In the middle Ages of the *Roman* Government it was always thought worthy of a Civil Death, or of what is worse than Death, perpetual Infamy. Our *Statutes* declare it to be one of the greatest Crimes that a Member of the University is capable of committing, by making not only those that write, but such as shall report the Contents of a Libel, liable to Expulsion; which is the greatest Punishment that can be inflicted in this Place.

HERE I find it convenient to take Notice of a Vulgar Error which hath prevail'd of late, in that Place especially, where one would think it should be the least entertain'd; I mean, an Opinion, That every extrajudicial *Account* of any wicked Man's Practices, ought to be reputed and punish'd as a Libel, be that *Account* ever so true, or those Practices ever so mischievous to the Publick. An Opinion which never was in the least countenanc'd by the *Civil Law*, or by our *Common-Law* either, till a Judgment pass'd upon an extraordinary Occasion, in a Court of absolute Power, came, I know not how, to be taken for a Precedent elsewhere. The *Civil-Law* does not only grant Impunity to those that shall make and publish such Discoveries, whether in or out of Judgment, by *Cap. 18. F. de Injur. & famos. Libell.* but encourages them with the Hopes of Reward, in Case they shall be ready on Occasion to make good their Allegations, *L. unic. C. de Famos. Libel.* For as Wise Governments distinguish themselves by the Care they take that no heinous Crime shall pass unpunish'd, they always account it a meritorious Act to detect such Crimes: Those in Authority having by that Means an Opportunity put into their Hands of calling the Criminals to account, who might otherwise, in very many Cases, escape unpunish'd, considering how few private persons have the Courage or Ability to prosecute any great Offender. Nor can any Inconveniency arise from hence, if due Severity be used in the Chastisement of Calumniators. But to punish them as such, who in order to put a Stop to some great and general Mischief, publickly charge wicked Men with their real Crimes, and are ready, when summon'd, to make good the Charge, and can by no other Means have access to Justice, this might look like establishing Iniquity by a Law; or at least, making the Law, which was design'd to protect the Innocent, become the Criminal's great Security. Here in *England*, till the foresaid Precedent came to be blindly follow'd, Falshood was always thought as necessary to a Libel, as Malice is to Murder; and if it be not thought as necessary now, I cannot see to what Purpose a Man should prosecute another for having Libell'd him, if he cannot by that Means clear his own Reputation, but will rather confirm the World in the Opinion of his Guilt, if he does it upon

upon Assurance that the Defendant will be condemn'd, whether what he hath written be true or false. For this Cause, I am Commission'd by the Complainant in the present Case, to tell the Defendant, That as our Court here proceeds according to the *Civil-Law*, none of those Defamatory Articles contain'd in his Libel will be charg'd to his Account, that have any Ground or Colour of Truth in them, in Case there be any such Articles, as I am fully perswaded there is not one in all the Libel. I will venture further, and do hereby invite the said Defamer to make his Appearance in Court, with a Promise, That the Party aggriev'd shall withdraw his Complaint, and desist from any further Prosecution of this Cause, in Case he, the said Defamer, will bring sufficient Proof of but any one of those Articles, or, which is more, if the Complainant shall not make it appear to be highly probable, that all and every of the said Articles, are not only notoriously false, but known to be so by the Libeller himself. If after such an Invitation, he shall continue to conceal or withdraw himself from Justice, who is there will blame Mr. Vice-Chancellor, if he shall continue the Inquiry to find him out? tho' he will not in that Case, have much greater Cause to continue the Inquiry, than he had to begin it, since the Falshood of the Libel was no less notorious in this Place, than the Malice at the Time when it was first publish'd; as appear'd from that Universal Horror and Indignation with which it was then read. I appeal to all that are acquainted with the Parties concern'd, Whether they were less mov'd at what they read in this Libel, than at the Account of that Assassinate for which *Coke* and his Accomplice were executed t'other Day at *Bury*? Or whether they thought this Attempt to Murder an innocent Man's Reputation, to have been manag'd in a manner less Barbarous and Butcherly than that?

It should, one would think, look like an Affront upon the Publick, to imagine that there needs an Apology for a Magistrate's endeavouring by any lawful Means to bring such an Offender to Justice; since by forbearing to do so, he must make the Offender's Crime his own, and become Guilty of all the Wrong which he hath Power and Authority to redress and does not. For he that refuses to do Justice in such a Case, is as he that does the Injury.

jury. It would, I am sure, be a real and as great an Affront as can be imagin'd, upon any Persons in High Place, to apprehend that they will interpose their Power in order to *screen* such an Offender from Justice. If any Man of Honour shall be apply'd to for that Purpose, I will not pretend to tell what answer he'll give, but I believe none will wonder, if it be like to that Gentleman's at *Bury*, who being desir'd to intercede for *Coke*, reply'd that *he would asssoon become an Advocate for the Devil.*

I AM aware that the greatest Objection of all remains still to be answer'd, which is, "That, allowing it to be lawful for the Vice-Chancellor to proceed by way of Enquiry *ex Officio* in some Cases, and that he is sufficiently authoriz'd to use that Method in the present Case, yet he is still to blame for having proceeded after an undue and illegal Manner.

IN order to take off this Objection, I shall instead of troubling my Reader with a long Bedroll of Authorities, desire him only in Case he hath in his Study, or can borrow, any *Civilian* or *Canonist*, any *Schoolman* or *Summist*, or *Lexicon Juridicum*, be the Author of what Country or what Religion soever, who treats of Judicial Proceedings according to the Practice, which hath prevail'd for these 4 or 500 Years in any Part of *Europe*, where-ever the *Civil* or the *Canon-Law* is in use, that he will look for *Inquisitio* in the *Index*, or in its proper Place, and he will there in all Likelihood find what will put an End to the present Dispute. I mean that which will discover to him the true Import of this Clause in our Charters, *Ex Officio inquirant*, i. e. how it was understood all the World over when those Charters were given.

THIS is what those Authors almost universally agree upon, viz. That there is a *general* Enquiry and a *special*. The *Special*, which I shall have no farther Occasion to mention at this Time, is when a *Certain* Person charg'd with a Crime, is brought to a Formal Tryal, and the Witnesses for and against him examin'd upon Oath.

THE General Enquiry is, as my Authors commonly express it, *non contra certam Personam*, or as they sometimes lay, it is *contra nullam Personam*, which I desire those Gentlemen to take Notice of, who think it a great Absurdity,

dity, that a Man should be summon'd to give Evidence against No Body. This Enquiry is twofold, being either what some call,

Generalissima, when not only the *Persons* that are to be enquir'd after, but the *Crimes* likewise are as yet *uncertain*, or not distinctly known to the Enquirer. Such an Enquiry is injoynd the Governor of a Province, by the Law before quoted *F. de Offic. Præsid.* Such is That, which is, or ought to be made upon General Articles publish'd before a Bishop's or an Archdeacon's Visitation; or upon the Charge given by a Judge in his Circuit, to the Grand-Inquest of a County.

It is properly call'd *Inquisitio generalis*, that is made after a Delinquent, when his Crime is notorious and certain, but his Person as yet uncertain or undiscover'd, which is the very Case now under Consideration, as when a Man is found murther'd, but the Murtherer lies conceal'd; a House is set on Fire, but no Body knows who did it; a Robbery has been committed, but the Thieves are fled. Now that which is the Duty of a Coroner, a Justice of the Peace, any Town-Magistrate or Grand-Jury in these or the like Cases, is, if I mistake not, much the same with what the *Civilians* properly call *Inquisitio generalis*, with this Difference as has been before observ'd, that they who manage the Inquisition here in *England*, take preparatory Informations upon Oath, which the *Civilians* will not allow of. In this Enquiry, as the fore-mention'd Authors of all Sorts agree, the Judge or Magistrate calls before him such Persons as he thinks capable of making any Discovery of the Malefactor or Delinquent, and without naming any Man himself (for that might bring a Scandal upon some innocent Person) Interrogates them what they know, have heard, or believe concerning the Man, whoever he is that committed the Fact. If he finds that there is a general Suspicion, Common Fame, or positive Evidence against any Man in particular, he then proceeds to the special Enquiry. As when a Bill or just Cause of Suspicion is found by the Grand Inquest, the Matter is transmitted to the Petty-Jury, who are to try whether the Person suspected be really Guilty or not.

TAKE

TAKE the whole Process briefly summ'd up in the Words of Carpzovius, a very good Protestant :

Si Judici non liquet, an & a quo certe delictum Commissum sit, Generalis ab eo instituitur Inquisitio per Informationis assumptionem generalem, ex Depositione Testium summaria, b. e. absque Juramento, super ipsum factum, personas, famam, aliasque circumstantias & qualitates. Quæ est quasi præparatoria ad inveniendum delictum, & delicti auctorem de quo nondum Curia habet notitiam. Quod si postea ex Inquisitione generali Judex tum de delicto, tum de auctore delicti notitiam aliquam consecutus est, solet adversus illam personam singulariter & in specie ex Officio inquirere, ne maleficium hoc ei sit impune. Par. III. Qu. 107.

THIS is what some, as I have said, call the *Generalissima*, when the *Delictum* and *Delinquent* are both unknown. In another Place, he says, That

CONSTITO aliquid de Delicto, Judex in genere Informationes assumendo, eos qui vel crimini adfuerant, vel præsumptive de eo notitiam aliquam habent, citare, & per defamationem neminem nominando, in genere interrogare debet, an Auctorem criminis sciant, vel saltem præsumptionem adversus aliquem & qua ex ratione ac fundamento habeant, & quid de hoc facto sentiant. Hocque modo Judex generaliter sive summarie dicitur inquirere. Quæ Inquisitio generalis sive scrutinium summarium vocari solet. Ex quo Judex de indiciis contra certam aliquam personam informatus, si ea verisimilia & sufficientia arbitretur, ad specialem Inquisitionem tunc progredi poterit. Et sic totum mundum procedere solere dicit Innocentius; who wrote about Five hundred Years ago; and so says Bartolus, and Baldus, and Maranta, and Julius Clarus, Farinacius, Menochius, and Matthæus; and so say they all, if we can confide in the Authorities quoted by those I have nam'd, and others; few of them perhaps will be found, who after having deliver'd their own Sentiments, do not add in the same or the like Words with Innocentius, & sic per totum mundum procedi solere, and with Julius Clarus, That De Jure Civili hodie in quocunque Casu permissum est Judici procedere ex Officio, & sic per Inquisitionem. But I question much, whether there be any Judicature in the World more strictly bound than ours is, by the Statutes which we are sworn to observe, to proceed according to the Civil-Law, as that Law stood when those Statutes were made.

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THE Schoolmen all of them, scarce a Man that I know of excepted, speak of this Matter just as the Lawyers do. But there being many *Jesuits* of that Number, I must be cautious how I use their Testimony, having been not long since accus'd by one concern'd in this Cause, of a Design to introduce the *Portuguese* Inquisition into *England*. But if there be, or ever was any such Plot on Foot, I believe it would be no difficult Matter to throw it upon the *Presbyterians*. Dr. Ames, who in his Time was one of the most eminent Leaders of that Party, having written what might render him much more liable to such a Suspicion than I can be, for Instance:

Pertinet saepe ad Officium Judicis, scilicet he, procedere per viam Inquisitionis, ubi nulla est instantia alicujus Accusatoris. Nam absque hoc, 1. Judicia omnia penderent ex arbitrio accusatorum. 2. Justitia illa cessaret, quæ necessaria est ad atrociam vitia coercenda, ac ad remp. purgandam & conservandam.

AGAIN, *Non satisfacit Officio suo Judex, si cognoscat casus ad se dilatas, nisi easdem ex occasione prudenter pervestiget, Job xxix. 16. Prov. xxiv. 11, 12.*

FURTHER, *Inquisitio illa quæ dicitur Generalis, quâ in genere & moderate quæritur de observantia legum & de criminibus adversus leges admissis, tam in Ecclesia quam Repub. est admodum utilis & congruens rationi ac Officio eorum qui habent curam Communitatis.* This he proves from *Acts xv. 36. Deut. xiii. 14. and xxi. 1, 2, &c.*

To the Point in question, *Si prius constet de Crimine commissio, & Author sit plane occultus, e. g. Facet in via publica homo trucidatus, vel constat domum alicujus esse dirutam vel direptam; tum generalis tantum Inquisitio debet fieri, an scil. Infamia vel Suspicio probabilis alicui adhaereat circa Crimen admissum.* This he proves from the Places before quoted, *Et ex analogica Inquisitionis extraordinariæ habita de Anathemate, Joh. vii.*

By the Way, if one may judge of the rest, by this Dr. Ames, it is not for nothing, that the *Presbyterians* have been suspected to hold Correspondence with the *Jesuits*, as may be gather'd from the following Position of his. *Nemo non antea infamatus de delicto, de quo inquiritur, tenetur seipsum prodere & accusare, etiamsi sub Juramento interrogetur, an noverit aliquem talis delicti reum.*

ANOTHER *Presbyterian* Divine, Professor Rivet, who never that I know of lay under any such Suspicion, yet

just as the *Jesuits* do about this Matter; but having cloy'd my Reader already with Quotations, I shall trouble him with no more than the following Words of *Rivet*, *Notandum est, esse Inquisitionem generalem & specialem; Generalis est, quando Judex non inquit specialiter de aliqua Persona (consequently summons in Witnesses to give Evidence against No-body) sed in genere, an sint facinorosi homines in provincia, civitate, vel loco; aut quando noto crimine, & ignoto auctore generaliter inquitur quis commiserit? Specialis est cum Judex inquit nominatim de hoc vel illo facinoroso.*

OUR Vice-Chancellor was proceeding by a Method and in a Manner so universally approv'd of and practis'd throughout the World, upon a Crime which for its Kind is the greatest of any that our *Charters* empower him to take Cognizance of, and in Degree the most Atrocious of that kind, when he was serv'd with an *Inhibition*, by the Master of *Tr—y's* Procurement, as 'tis suppos'd. How the Reverend Judges of the High Court of the *King's-Bench* will resent their being surpriz'd into such a Thing: or how the University will vindicate the most valuable of her Privileges, which being once taken from Her, She must bid *Adieu* to all the rest, from so manifest and unprecedented a Violation, a private Member ought not so much as to guess.

BUT as one concern'd in the Cause, I may, I hope, be allow'd to inquire, What should move this Gentleman to a Procedure so seemingly contrary to those Sacred Engagements which we are all under, to maintain that Privilege, as well as the rest. He was call'd upon by his Superior, whom he is sworn to obey, *quatenus jus fasque est*, to give an Account of what every Body supposes him to have some Knowledge of, and that in order to prevent giving the like Trouble to his Friends and Confidants, who had they been cited before him, would in all Likelihood have given such Information, as must have oblig'd Mr. Vice-Chancellor to have sent him a quite different Summons; and forc'd him to come not to the General Inquiry, were he might have appear'd without Prejudice to himself or Cause; but to the Special, where he wou'd have been treated as a Criminal. Hitherto he had no Hardship put upon him. But he was afraid, they'l say, lest some unlawful Interrogatories might
be

be put to him. His *Preflor* in that Case would have told him, that he was not oblig'd to answer, *nisi quatenus ad id de jure tenetur*. But such a Refusal, they'l say, might have render'd him suspected. Supposing this, it was nevertheless the Vice-Chancellor's Duty to examine him; and his to obey the Summons. But every one knows him to have been so strongly suspected before, that he cou'd not be more so upon that Account. If the Suspicion was ill-grounded, it was now in his Power to clear himself. If he were guilty, he had now, what next to Innocency itself, an honest Man, a Christian, &c. would most desire; a fair Opportunity to acknowledge and repair the Wrong he had done, without being put to the Disgrace of a Tryal.

If there hath been any Thing irregular in the Proceedings, it is what he of all Men living hath the least Cause to complain of. He hath not been dealt with according to the Rigor, or to what some may take to be the manifest Intention of our *Statutes*, which if they did not oblige the Vice-Chancellor to proceed in a more summary Manner, would most certainly have justify'd him, had he without more ado begun with the Special Inquiry; Common Fame, if it appear'd probable, would in the Opinion of all Lawyers, have been Warrant sufficient for his so doing. But in this Case there was, as most People think, a Moral Certainty, arising from such Presumptions, as did not only beget Suspicion, but force a Belief. There are some Presumptions in *Law* so strong, that the Court will suffer nothing to be pleaded against them, and are taken for Proof, tho' supported by no positive Evidence. If there be any such in *Equity*, it must be those, which will suffer no Man to doubt of the Matter in Question, such are some of these, and therefore might perhaps have been taken for full Proof, in a Court where the Judge is bound to proceed, *Sola rei veritate inspecta*. They might no doubt have been rank'd with those of an inferior Degree, which yet are of force sufficient to transferr the *onus probandi* upon the Adverse Party, and consequently to oblige the Gentleman we are speaking of, to clear himself. In this Case the Lord Coke agrees with the *Civilians*, That *stabitur præsumptioni, dummodo probatur contrarium*. But a milder and

A more round-about Course was taken, of which, if any Man had cause to complain, it was the Party griev'd, whose Reputation lies a bleeding, till this Matter shall be brought to a decisive Issue. The Person who was handled so gently, in so odious a Cause, he surely ought to have forgiven this Wrong. But he has now made it a Publick Cause, in which the whole University are as much or more concern'd than any Private Man can be: He has drawn the Eyes of the World upon us, who will be attentive to what we are doing in this Matter; and in Case we affect any further Delays, will be apt to think of us what is more easy for the Reader to imagine, than fit for me to express.



F I N I S.

